

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

**§ 416.973 General information about work activity.**

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substan-

tial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

(f) *Possible effect on income and resource levels.* Your earnings, including earnings from work done during a trial work period, will be considered under the income and resource provisions in subparts K and L of this part to determine whether or not your earnings cause you to exceed the limitations on income or resources under the Supplemental Security Income Program.

**§ 416.974 Evaluation guides if you are an employee.**

(a) *General.* We use several guides to decide whether the work you have done shows that you are able to do substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. We will generally consider work that you are forced to stop after a short time because of your impairment as an unsuccessful work attempt and your earnings from that work will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis

of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and § 416.976, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

- (i) Your earnings averaged more than \$200 a month in calendar years prior to 1976;
- (ii) Your earnings averaged more than \$230 a month in calendar year 1976;
- (iii) Your earnings averaged more than \$240 a month in calendar year 1977;
- (iv) Your earnings averaged more than \$260 a month in calendar year 1978;
- (v) Your earnings averaged more than \$280 a month in calendar year 1979;
- (vi) Your earnings averaged more than \$300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than \$500 a month in calendar years after 1989.

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

- (i) Your earnings averaged less than \$130 a month in calendar years before 1976;
- (ii) Your earnings averaged less than \$150 a month in calendar year 1976;
- (iii) Your earnings averaged less than \$160 a month in calendar year 1977;
- (iv) Your earnings averaged less than \$170 a month in calendar year 1978;
- (v) Your earnings averaged less than \$180 a month in calendar year 1979;
- (vi) Your earnings averaged less than \$190 a month in calendar years after 1979 and before 1990; or
- (vii) Your earnings averaged less than \$300 a month in calendar years after 1989.

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

- (i) Your average earnings are not greater than \$200 a month in calendar years prior to 1976;
- (ii) Your average earnings are not greater than \$230 a month in calendar year 1976;
- (iii) Your average earnings are not greater than \$240 a month in calendar year 1977;
- (iv) Your average earnings are not greater than \$260 a month in calendar year 1978;
- (v) Your average earnings are not greater than \$280 a month in calendar year 1979;
- (vi) Your average earnings are not greater than \$300 a month in calendar years after 1979 and before 1990; or
- (vii) Your average earnings are not greater than \$500 a month in calendar years after 1989.

(5) *If there is evidence showing that you may have done substantial gainful activity.* If there is evidence showing that you may have done substantial gainful

activity, we will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b) (2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

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**§ 416.975 Evaluation guides if you are self-employed.**

(a) *If you are a self employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. We will generally consider work that you are forced to stop after a short time because of your impairment as an unsuccessful work attempt and your income from that work will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of

unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1082 of this chapter for an explanation of “material participation”). If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* After your normal business expenses are deducted from your gross income to determine net income, we will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 416.976 that have not been deducted in determining your net earnings from self-employment. We will consider the resulting amount of income from the business to be substantial if—